

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROY WARNER,

Plaintiff,

-against-

MONSOUR WINN KURLAND & WARNER, LLP
and STEPHEN WINN,

Defendants.

FEUERSTEIN, J.

X

ORDER
CV-09-3557(SJF)(ETB)

X

On August 17, 2009, plaintiff Roy Warner ("plaintiff") commenced this breach of contract action against defendants Monsour Winn Kurland & Warner, LLP and Stephen Winn (collectively, "defendants") pursuant to this Court's diversity jurisdiction under 28 U.S.C. § 1332. On October 23, 2009, defendants filed an answer to the complaint and asserted a counterclaim against plaintiff seeking to recoup money they allegedly overpaid to plaintiff. On January 20, 2011, defendants moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment on their counterclaim. By electronic order entered February 3, 2011, defendants' motion was referred to Magistrate Judge E. Thomas Boyle for a report and recommendation in accordance with 28 U.S.C. § 636(b). On February 18, 2011, Magistrate Judge Boyle issued a Report and Recommendation ("the Report") recommending that defendants' motion be denied. No objections have been filed to the Report. For the reasons stated herein, the Court accepts Magistrate Judge Boyle's Report in its entirety.

I

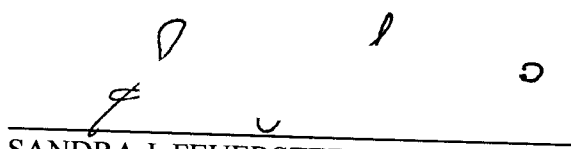
Rule 72 of the Federal Rules of Civil Procedure permits magistrate judges to conduct proceedings on dispositive pretrial matters without the consent of the parties. Fed. R. Civ. P. 72(b).

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff'd, 305 Fed. Appx. 815 (2d Cir. Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Boyle's Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Boyle's Report in its entirety and adopts the Report as an order of the Court. Defendants' motion for summary judgment on their counterclaim is denied.

SO ORDERED.



SANDRA J. FEUERSTEIN
United States District Judge

Dated: April 8, 2011
Central Islip, New York